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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

11 || In re Apple & AT&T Antitrust Litigation NO. C 07-05152 JW

ORDER BIFURCATING CLASS AND MERITS DISCOVERY; SCHEDULING CASE MANAGEMENT CONFERENCE

Presently before the Court are the parties' Proposed Discovery Plans.¹ Plaintiffs contend that simultaneous class and merits discovery is appropriate, while Defendant Apple contends that class discovery should precede merits discovery.

Discovery in a putative class action is generally limited to certification issues in the precertification stage. Babbitt v. Albertson's Inc., 1992 U.S. Dist. LEXIS 19091 at *6 (N.D. Cal. Dec. 1, 1992) (citing Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 359 (1978)). “Discovery on the merits is usually deferred until it is certain that the case will be allowed to proceed as a class action.” Id. at *7 (citing Eisen v. Carlisle & Jacquel, 417 U.S. 156, 177 (1974)).

23 In this case, the Court finds that bifurcation of class and merits discovery is in the best
24 interest of the efficient resolution of this complex antitrust litigation. Accordingly, the parties are
25 ordered to proceed with class discovery and merits discovery is STAYED.

²⁸ ¹ (Plaintiffs' Proposed Discovery Plan, Docket Item No. 140; Defendant Apple, Inc.'s Proposed Discovery Plan, Docket Item No. 141.)

United States District Court

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1 Further, the parties are ordered to meet and confer and formulate a reasonable class
2 discovery plan. The Court sets a Case Management Conference on **January 12, 2009 at 10:00 a.m.**
3 On or before **January 5, 2009**, the parties shall file a Joint Case Management Statement which shall
4 include the parties' proposed class discovery schedule.

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6 Dated: December 12, 2008

James Ware
JAMES WARE
United States District Judge

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United States District Court

For the Northern District of California

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

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15 **Dated: December 12, 2008**

Richard W. Wieking, Clerk

17 **By: /s/ JW Chambers**
18 **Elizabeth Garcia**
18 **Courtroom Deputy**

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